



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

#### **EPA-R06-OAR-2018-0177; FRL-9994-25-Region 6**

#### **Air Plan Approval; New Mexico; City of Albuquerque-Bernalillo County; New Source Review (NSR) Preconstruction Permitting Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County. The EPA is proposing to approve a newly adopted Minor New Source Review (MNSR) permitting regulation to waive permitting requirements for certain sources, and to create new procedures for authorizing construction and modification of certain sources in a related amendment to another regulation.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2018-0177, at <https://www.regulations.gov> or via e-mail to [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Rick Barrett, (214) 665-7227, [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Rick Barrett, EPA Region 6 Office, Air Permits Section, 1201 Elm Street, Dallas, TX 75202, (214) 665-7227, [barrett.richard@epa.gov](mailto:barrett.richard@epa.gov). To inspect the hard copy materials, please schedule an appointment with Rick Barrett or Mr. Bill Deese at 214-665-7253.

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

#### **I. Background**

The Clean Air Act (CAA or the Act) at section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for

attainment/unclassifiable and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor New Source Review (MNSR). The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source/major modification thresholds and thus do not qualify as “major” and applies regardless of the designation of the area in which a source is located. The EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160 - 51.166. Minor NSR regulations are contained at 40 CFR sections 51.160 - 51.164.

The SIP submittal under review in this action includes the addition of a newly adopted regulation, 20.11.39 (Part 39) of the New Mexico Administrative Code (NMAC), along with a related amendment to regulation 20.11.41 (Part 41) of the NMAC. These revisions incorporate regulations to waive permit requirements for certain gasoline dispensing facilities (GDF), and emergency stationary reciprocating internal combustion engines (ES-RICE); and to create new procedures for authorizing construction and modification of the eligible sources.

## **II. What did City of Albuquerque-Bernalillo County Submit?**

On January 18, 2018, the governor of New Mexico submitted revisions to the City of Albuquerque – Bernalillo County (the “County”) Minor NSR SIP to EPA. This proposed SIP revision would apply exclusively to the City of Albuquerque and Bernalillo County.

## **III. EPA’s Evaluation**

The current County SIP includes the most recent EPA approved Part 41 provisions (See 82 FR 29421, June 29, 2017), which form the current basis of the County’s Minor NSR SIP

program implemented by the City of Albuquerque Environmental Health Department (the “Department”). The following sections of this proposed action analyze the proposed addition of a newly adopted regulation, PERMIT WAIVERS AND AIR QUALITY NOTIFICATIONS FOR CERTAIN SOURCE CATEGORIES, Part 39 of the NMAC, along with a related amendment to the CONSTRUCTION PERMITS regulation, Part 41 of the NMAC, in order to determine whether the submitted revisions under the Governor of New Mexico’s letter meet the requirements of the CAA and the EPA’s regulations, policy, and guidance for NSR permitting. In newly adopted Part 39, sections 1, 3, 4, 5, 6, 9, 10, 11, 16, 18, 19, and 20, are non-substantive, containing provisions related to fees, statutory authority, effective date, and other elements that govern the newly established Part<sup>1</sup>, and thus will not be analyzed in the details below. Table 7 below lists the revisions which are being proposed for approval in this proposed rulemaking.

*A. What are the Requirements for the EPA’s Evaluation of a Preconstruction Permitting Program SIP Submittal?*

In addition to the preconstruction permitting program requirements of section 110(a)(2), our evaluation must ensure that the submittal complies with section 110(l) of the CAA before it can be approved into the SIP. Section 110(l) states that the EPA shall not approve a revision of the SIP if it would interfere with any applicable requirement concerning attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress, or any other applicable requirement of the Act. Thus, under CAA section 110(l), the proposed MNSR SIP revision must not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act.

---

<sup>1</sup> These sections can be reviewed in the County’s submittal which is included in the docket for this proposed rulemaking. See also Attachment A, New Part 39 (pp 1-8), and Amended Part 41(pp 2-3), for new and comparison wording in the County’s submittal.

*B. Summary of Albuquerque/Bernalillo County's SIP Revisions Submittal*

The January 18, 2018, SIP submittal meets the completeness criteria established in 40 CFR part 51, appendix V. In addition to the completeness review, the revisions contained in the SIP submittal were evaluated against the applicable requirements contained in the Act and 40 CFR part 51.

Part 39, section 2, Scope, governs the applicability of the exemption from Minor NSR permitting and limits the exemption to two types of stationary source categories: emergency stationary reciprocating internal combustion engines (ES-RICE), and gasoline dispensing facilities (GDF). Section 2 also includes exclusions from Part 39 for certain sources. Part 39 does not apply to: stationary sources within Bernalillo County that are located on Indian lands; stationary sources that, in the aggregate, constitute a major source under the applicable provisions of NMAC which are located on one or more contiguous or adjacent properties, and which are under common control of the same person; any non-emergency stationary RICE engines; sources which contain emission units other than ES-RICE and GDF, and that require a construction permit; sources that are part of a Title V permit; or sources located at a single family private residence.

Section 7 of the SIP submittal provides definitions for the terms used throughout 20.11.39 NMAC. The submitted revisions provide new definitions for several new terms. The definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.39 NMAC shall govern. Definitions provided in the applicable federal standards referenced in Part 39 shall apply to source categories subject to those federal standards which are incorporated by reference into board regulations.

Section 12 of the SIP submittal contains the provisions for Part 39 sources to qualify for a waiver from construction permit requirements pursuant to 20.11.41. Owners and operators of Part 39 sources shall apply for an Air Quality Notification (AQN) rather than a construction permit when submitting an application to the department. If an owner or operator of a source establishes that it is a Part 39 source and demonstrates that the owner or operator will comply with all applicable regulations set out in Section 13 of this Part, the department shall waive compliance from further source registration or construction permitting requirements pursuant to 20.11.40 NMAC or 20.11.41 NMAC. This Part shall not waive any permit requirements for sources which are not ES-RICE or GDF. Except as noted below in 20.11.39.15, no public notice is required if the department waives further permitting requirements for a Part 39 source. No department hearing shall be held for a Part 39 source. The issuance of an AQN by the department is not a permitting action and is not subject to petition to the Albuquerque-Bernalillo County air quality control board. The new AQN will assist in ensuring that these sources are not engaging in acts that will result in an exceedance of one of the NAAQS, in clarifying when each annual emission inventory is to be submitted, and that notification must be provided to the Department.

Section 13 of the SIP submittal contains the requirements for the two source categories to which Part 39 applies. General requirements include that sources comply with any federal regulations which are incorporated by reference into board regulations and which apply to that source category; that no owner or operator of a source in a source category to which this part applies shall construct or operate a Part 39 source without having first applied to the department for and received an AQN; that the owner or operator of each Part 39 source shall submit an annual emissions report to the department by March 15 of each year. Note that for their annual emission report, GDF granted an AQN shall submit a report of their annual gasoline throughput

for the previous January through December, and ES-RICE granted an AQN shall submit a report of their annual operating hours for the previous January through December. The emission report must include a signed certification, and nothing in Part 39 relieves any owner or operator of any source from the responsibility to comply with any applicable requirement in local, state, or federal law. No Part 39 source shall emit any regulated air pollutant in quantities which would constitute a major source.

Section 13 also outlines specific requirements for each category. For ES-RICE not subject to the federal emissions standards listed below, they shall comply with all applicable board and federal regulations identified in the AQN. ES-RICE subject to 40 CFR part 60 subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, 40 CFR part 60 subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, and 40 CFR part 63 subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, shall comply with all applicable requirements in those federal regulations, as amended, and all applicable board regulations identified in the AQN. GDF sources subject to 40 CFR part 63 subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Gasoline Dispensing Facilities shall comply with all applicable requirements in 40 CFR part 63 subpart CCCCCC, as amended, and all applicable board regulations identified in the AQN.

Section 14 of the SIP submittal contains the requirement that each owner or operator of a Part 39 source apply for an AQN with the department in compliance with the requirements of this section. A person applying to the department for an AQN shall submit a completed application provided by the department, and the department shall reject any incomplete application for an AQN. Certain information is required for the department to determine that an

application for an AQN is complete. This information includes: the name, street address and post office address of the owner and any operators of the source or responsible entity; sufficient attachments, including calculations, computations and all other analyses used by the applicant to provide information to describe the potential emission rate and nature of all regulated air contaminants that the source may emit and control measures used to comply with all applicable federal standards. Information required specifically for GDF includes: the anticipated annual gasoline throughput; the total number of refueling positions; for each refueling position, identify whether it dispenses gasoline only, diesel only, both, or is for heavy duty truck diesel refueling. Information specifically for ES-RICE includes: a statement that the engine will only be used for emergency purposes, other than as allowed by applicable regulations.

The Department also requires the following information from sources eligible for the Minor NSR permitting exemption: any other relevant information that the department may reasonably require; the signature of the applicant, with the date it was signed, certifying that the information represented in the application and attachments, if any, is true, accurate and complete and that the owner and all operators will comply with all applicable requirements in board regulations for that source category; payment for the appropriate application fee required; and that the department shall not require any Part 39 source to submit air dispersion modeling with its AQN application.

Section 15 of the SIP submittal outlines the procedures for review of an AQN application by the department. Within 45 days after the department has received a complete application for an AQN as required, the department shall issue or deny the AQN. If the AQN is issued, the department shall send a copy of the AQN to the applicant by electronic mail, or such other means as may be necessary. If the AQN is denied, the department shall send a notice of denial to the



applicant by electronic mail, or such other means as may be necessary; if the department determines that the application for the AQN is incomplete, that Part 39 does not authorize the source to receive an AQN, or that some other action is necessary, up to and including denial of an AQN, the department shall inform the applicant by electronic mail, or such other means as may be necessary; and, on the first business day of each month, the department shall publish on its website a list of all AQNs issued within the previous month, including the name and location of each AQN issued. The department shall publish a current list of all active AQNs on its website quarterly. The department website shall prominently display information enabling members of the public to contact the department regarding any AQN issued.

Section 17 of the SIP submittal outlines the compliance and enforcement provisions of Part 39. It states that owners or operators of Part 39 sources within Albuquerque-Bernalillo County shall comply with the requirements in Part 39, whether set forth in their AQN or not. These provisions include that: Inaccurate or incomplete information in an application is a violation of Part 39; any knowing and willful false statement in an AQN application is a violation of Part 39; an ES-RICE which has been issued an AQN shall be operated for emergency use only or as necessary for exercising or maintenance of the engine; the director may issue a compliance order requiring compliance and assessing a civil penalty not to exceed \$15,000.00 per day of noncompliance for any violation of any applicable board regulations by a Part 39 source, and the director may also commence a civil action in district court for appropriate relief, including a temporary and permanent injunction. Regarding inspections, the department may conduct scheduled and unscheduled inspections to ensure compliance with any applicable board regulations. Also, that upon presentation of credentials, the department: shall have a right of entry to, upon, or through any premises on which a Part 39 source is located or on which any

records required to be maintained by any applicable board regulations; may at any reasonable time have access to and copy any records required to be established and maintained by any applicable board regulations; may inspect any monitoring equipment and method required by any applicable board regulations; and may sample any emissions that are required to be sampled pursuant to any applicable board regulations. Regarding credible evidence, any credible evidence may be used to establish whether an owner or operator of a Part 39 source has violated any applicable board regulations. Credible evidence and testing shall include but is not limited to: compliance methods specified in any applicable board regulations; or other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method and approved by the department and EPA. Lastly, an owner or operator of a Part 39 source who violates an applicable board regulation may be subject to enforcement action

Title 20.11.41. CONSTRUCTION PERMITS, section 2, of the current SIP governs the scope of the Minor NSR program. The County's current SIP requires stationary sources with emissions in excess of the limits listed in this section to obtain a construction permit, unless the source or activity qualifies for an exemption. In this submittal, the County revised Part 41, section 2, subsection E (2), to include references to new regulation Part 39. Although more than one air quality regulation adopted by the board may apply to a stationary source, including 20.11.39, 20.11.40, 20.11.60, 20.11.61, 20.11.63, and 20.11.64 NMAC, nothing in 20.11.41 NMAC shall be construed to require more than one permit application for each unit proposed for construction or modification. Definitions and provisions included in specific federal program regulations shall apply to permit review of any regulated air contaminant and source regulated by the federal NSPS, NESHAP, prevention of significant deterioration, visibility or nonattainment requirements.

The County also revised section 2 of Part 41 by adding subsection G, which allows sources in the two exemption eligible source categories to apply for an air quality notification (AQN), which waives certain applicability requirements in Part 41. The provision states that an owner or operator of an emergency stationary reciprocating internal combustion engine or gasoline dispensing facility, as defined in Part 39, may apply for an air quality notification pursuant to that Part. If the department grants an air quality notification, then the source will not be required to apply for and obtain a construction permit.

### *C. CAA 110(l) Analysis*

Each revision to an implementation plan submitted by a state under the Clean Air Act shall be adopted by such state after reasonable notice and public hearing. The County adopted the proposed revisions after reasonable notice and public hearing. CAA section 110(l) also states that the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. For purposes of the analysis under CAA section 110(l), we have taken into account the overall effect of the revisions included in this action. The County's proposed revisions will change the administrative procedure by which certain GDF and ES-RICE obtain authorization for construction and modification. The County's revisions would basically accomplish a procedural change and will cause no change in emission levels or controls and will not impact emissions or ambient concentration of any compounds. These revisions primarily incorporate regulations to waive permit requirements for certain gasoline dispensing facilities (GDF) and emergency stationary reciprocating internal combustion engines (ES-RICE), and to create new procedures for authorizing construction and modification of the eligible sources.

As required by section 110(l) of the CAA, we analyzed the addition of these proposed MNSR SIP revisions to ensure that they do not interfere with any applicable requirement for attainment of the NAAQS, reasonable further progress (RFP), or any other CAA requirement. Albuquerque and Bernalillo County are in attainment for all National Ambient Air Quality Standards and have been continuously since 1996. The Department has been carrying out the Minor NSR program, as revised, since January 1, 2014. Since then, there has been no indication that these sources have interfered with attainment, RFP, or any other requirement of the Act. Bernalillo County is designated attainment for all NAAQS pollutants, and the air quality trends provided in the monitoring tables below support that the air quality is improving in the County. Note that additional air quality data is included in the submittal.

The EPA took into consideration the following air quality trends when making the decision to propose that the revisions be approved into the SIP:

- Compliance with the 8-hour ozone standard which has improved county-wide with ozone pollutant concentrations trending downward since the late 1980's. The 8-Hour ozone standard trends are listed in Table 1:

**TABLE 1: Ozone Data**

<b>OZONE DESIGN VALUES (8-HOUR STANDARD, PRIMARY &amp; SECONDARY)</b>	
<b>Maximum permissible concentration under 2015 NAAQS: 0.070 parts per million</b>	
<b>Year</b>	<b>Design Value (ppm)</b>
2006	0.073*
2007	0.073*
2008	0.070
2009	0.070
2010	0.068
2011	0.070
2012	0.074*
2013	0.072*
2014	0.068
2015	0.066
2016	0.065

\* Data complied with the NAAQS in effect at that time.

- Compliance with the 1-Year NO<sub>2</sub> and 1-hour NO<sub>2</sub> standards has improved county-wide with NO<sub>2</sub> pollutant concentrations trending downward since the late 1990's. The 1-Year NO<sub>2</sub> trends are listed in Table 2:

**TABLE 2: NO<sub>2</sub> Data**

<b>NITROGEN DIOXIDE DESIGN VALUES (1-YEAR STANDARD, PRIMARY &amp; SECONDARY)</b>	
<b>Maximum permissible concentration under 1971 NAAQS: 53 parts per billion (ppb)</b>	
<b>Year</b>	<b>Design Value (ppb)</b>
2006	15.4
2007	14.9
2008	13.2
2009	12.4
2010	12.0
2011	13.3
2012	13.8
2013	11.8
2014	11.7
2015	11.0
2016	10.4

- Compliance with the 24-hour PM<sub>10</sub> standard has improved county-wide with PM<sub>10</sub> pollutant concentrations trending downward since the late 1980's. The 24-Hour PM<sub>10</sub> trends are listed in Table 3:

**TABLE 3: PM 10 Data**

<b>PM10 SECOND HIGHEST 24-HOUR AVERAGE*</b>	
<b>Maximum permissible concentration under 1987 NAAQS: 150 micrograms per cubic meter, no more than three exceedances annually</b>	
<b>Year</b>	<b>2<sup>nd</sup> highest 24-hour average (mg/m<sup>3</sup>)</b>
2006	148
2007	130
2008	131
2009	113
2010	102
2011	153
2012	145
2013	120

2014	152
2015	106
2016	133

\*Data excludes values flagged for exceptional events

As shown by Table 3, PM<sub>10</sub> levels in the City/County area (as measured by the second highest 24-hour average per year) have fluctuated between 102 and 153 micrograms per cubic meter over the last decade. However, the overall trend over the last decade is relatively stable, below the standard of 150 micrograms per cubic meter generally. Albuquerque and Bernalillo County have remained in attainment for the PM<sub>10</sub> standard during the entire period.

Table 4 shows PM<sub>2.5</sub> compliance with the 24-hour standard. Additional data in the submittal show PM<sub>2.5</sub> compliance with the annual standard. As shown in Table 4, PM<sub>2.5</sub> levels have remained well below the 24-hour standard.

**TABLE 4: PM 2.5 Data**

<b>PM<sub>2.5</sub> DESIGN VALUES (24-HOUR STANDARD, PRIMARY &amp; SECONDARY)</b>	
<b>Maximum permissible concentration under 2012 NAAQS: 35 micrograms per cubic meter</b>	
<b>Year</b>	<b>Design Value (mg/m<sup>3</sup>)</b>
2006	19
2007	18
2008	17
2009	16
2010	15
2011	23
2012	26
2013	27
2014	20
2015	18
2016	19

The next table shows carbon monoxide (CO) monitoring results and how they compare to the NAAQS. Table 5 shows CO compliance with the 8-hour CO standard. As shown by Table 5, CO levels have remained well below the 8-hour and 1-hour standards.

**TABLE 5: CO Data**

<b>TABLE OF CO DESIGN VALUES (8-HOUR STANDARD. PRIMARY}</b>	
<b>Maximum permissible concentration under 1971 NAAQS: 9 parts per million</b>	
<b>Year</b>	<b>Design Value (ppm)</b>

2006	3.0
2007	3.4
2008	3.4
2009	2.6
2010	2.6
2011	2.6
2012	2.2
2013	2.2
2014	1.2
2015	1.4
2016	1.9

Below, Table 6 shows sulfur dioxide (SO<sub>2</sub>) monitoring results and how they compare to the 1-hour NAAQS. As shown by Table 6, SO<sub>2</sub> levels have remained well below the NAAQS threshold. Because EPA promulgated the standard in 2010 and the design value period is three years, the first design value data were not available until 2013.

**TABLE 6: SO<sub>2</sub> Data**

<b>SO<sub>2</sub> DESIGN VALUES (1-HOUR STANDARD PRIMARY, 3-HOUR STANDARD SECONDARY)</b>	
<b>Maximum permissible concentration under 2010 NAAQS: Primary standard: 75 parts per billion Secondary standard: 0.5 parts per million</b>	
<b>Year</b>	<b>Design Value (mg/m<sup>3</sup>)</b>
2013	5
2014	5
2015	5
2016	6

Following discussions with Region 6, the Department conducted additional research to supplement the submittal. This research included: the number of the GDFs in the county which have the potential to emit VOC in the ranges of 0-25 tons per year, 25-50 tons per year and 50-100 tons per year; and the methodology utilized to calculate VOC emissions from these GDF. The Department's historical approach for calculating potential VOC emissions utilized the AP-42 Table 5.2-7 emissions rate factors (June 2008). As part of the EPA Tribal Minor New Source

Review (NSR) final rule (July 2011), EPA developed new guidance for calculating VOC emissions from GDF entitled “Potential to Emit Calculator for Gasoline Dispensing Facilities” (Final March 23, 2015). The Department recently utilized this guidance to recalculate potential VOC emissions from their GDF. The results show that all GDF within its jurisdiction fall below the current EPA SIP approved minor NSR threshold of 25 tons per year or more of any single regulated air contaminant.

Prior to the revision, any source that was subject to New Source Performance Standards for Stationary Sources (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations, regardless of its potential to emit, was automatically required to obtain a permit. This subjected all GDF, regardless of their potential to emit, to NSR permitting. As stated in response to a comment received during the County’s public comment period, “the revision does not remove any existing air quality control requirement or increase air pollution. EHD proposes to change the process by which certain sources are regulated, not end any regulation of those sources. The result, as we have tried to make clear, will be to change one feature of public participation in air quality, not end that participation altogether.”<sup>2</sup> Further, the Department has found that its universe of GDF contribute only approximately 0.28% of the VOC in the ambient air in the County using the EPA guidance of March 23, 2015. As such, their impact on the ozone NAAQS is very minimal.

Regarding ES-RICE, the pollutants which are relevant to NAAQS attainment are ozone, NO<sub>x</sub>, PM, CO and SO<sub>2</sub>. As exhibited in the tables above, Albuquerque and Bernalillo County have maintained attainment for the NAAQS for ozone, NO<sub>x</sub>, PM, CO and SO<sub>2</sub> for the entire time during which federal emission controls for ES-RICE have been in effect. The Department’s

---

<sup>2</sup> See Attachment C, 2. Public Comment, of the County’s January 18, 2018 submittal.



proposal will not change those controls, it will not impact emissions from these sources, and will not interfere with attainment of any NAAQS. Emissions from ES-RICE will not interfere with NAAQS attainment because they are very low and because they contribute so little to the total amount of emissions of concern which are relevant for NAAQS compliance, particularly when examined in context with the total emissions throughout the County. The applicable regulations only permit ES-RICE to operate during emergencies, other than the few hours which are necessary to maintain the engines. In the Department's experience reviewing emission inventory reports for these sources, it estimates that the average hours of operation of each ES-RICE in Albuquerque-Bernalillo County is 24 hours per year. Comparing the annual hours of use of emergency engines (average 24 hours) versus regular engines which may operate year-round (8,760 hours), ES-RICE engines in Albuquerque-Bernalillo County would only produce about 0.3% of the impact that the same engine would produce if it were used continuously. When using an assumed maximum of 500 hours operation per year for each ES-RICE, EPA has previously concluded that a 500 hours per year limit would result in emissions of 5.5 tons per year or less from each ES-RICE. See 78 FR 15296 (March 11, 2013). Comparing this 500 hour per year limit to the Department's actual estimates of 24 hours per year, each ES-RICE will only emit about 0.26 tons per year. We also note that these engines are also subject to 40 CFR part 60 subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, 40 CFR part 60, subpart JJJJ, Standards of Performance for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines; and 40 CFR part 63 subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

Since Albuquerque and Bernalillo County have been in attainment for all the NAAQS for pollutants emitted by ES-RICEs during the entire period that federal and local emission controls for ES-RICE have been in effect, and those controls will remain in place, this proposal will not interfere with contained attainment of the NAAQS.

Based on these historical trends and supporting air quality monitoring data documenting air quality improvements throughout the State, we believe the proposed Minor NSR SIP revision meets the requirements of CAA section 110(l) and is consistent with the provisions of 40 CFR 51.160(e) which provide state agencies the latitude to define the types and sizes of facilities, buildings, structures, or installations subject to review. We believe the implementation of these rules will not interfere with any applicable requirement concerning attainment, reasonable further progress, maintaining PSD increment, or any other applicable requirement of the CAA.

Accordingly, the EPA is proposing approval of these revisions under section 110 of the Act. The SIP submittal is available in the docket and from the EPA Region 6 office.

#### **IV. Proposed Action**

We are proposing to approve the revisions to the City of Albuquerque – Bernalillo County Minor NSR program dated January 18, 2018. EPA is proposing to approve newly adopted MNSR permitting regulations which waive permitting requirements for eligible GDF and ES-RICE, and create new procedures for authorizing construction and modification of these eligible sources. The EPA has made the preliminary determination that the revisions are approvable because the submitted rules are adopted and submitted in accordance with the CAA and the EPA regulations at 40 CFR 51.160 - 51.164, and are consistent with the laws and regulations for Minor NSR permitting. 40 CFR 51.160(e) allows state and local agencies to identify the types and sizes of facilities, buildings, structures, or installations which will be

subject to Minor NSR review provided that the submitted plan discusses a basis for determining which facilities will be subject to review. In addition, the plan must not contain any provisions which would violate section 110(l) of the CAA. The County stated in its submittal that requiring each exemption eligible GDF and ES-RICE to undergo the Minor NSR public notice and participation process had become an administrative burden. A large percentage of the County's time spent on permitting actions was spent on GDFs and ES-RICEs which are responsible for emitting minimal amounts of regulated pollutants when compared to the County's entire permitting universe. As explained in the 110(l) section of this proposed rule, these sources emit less than 1% of the total regulated air pollutant emissions within the County. As such, the County is seeking to streamline the process for these sources, so that it can spend more time on sources that emit regulated pollutants in greater, more consequential amounts. EPA finds that the County has provided a reasonable basis for determining that these facilities should not be subject to review. Further, as explained above, this revision will not result in a violation of CAA section 110(l). Therefore, under section 110 of the Act, and for the reasons presented above, the EPA proposes approval of the revisions to the County Minor NSR SIP identified in Table 7 below.

Table 7 summarizes the changes made to the County's SIP that are contained in the SIP revisions dated January 18, 2018. A summary of the EPA's evaluation of each substantive section and the basis for this action is discussed in Section III of this preamble.

**Table 7: Summary of the SIP submittal in this action.**

Section	Title	Submittal Dates	Proposed Action
20.11.39 NMAC –PERMIT WAIVERS AND AIR QUALITY NOTIFICATIONS FOR CERTAIN SOURCE CATEGORIES			
20.11.39.1 NMAC	Issuing Agency	01/18/2018	Approval
20.11.39.2 NMAC	Scope	01/18/2018	Approval
20.11.39.3 NMAC	Statutory Authority	01/18/2018	Approval
20.11.39.4 NMAC	Duration	01/18/2018	Approval

20.11.39.5 NMAC	Effective Date	01/18/2018	Approval
20.11.39.6 NMAC	Objective	01/18/2018	Approval
20.11.39.7 NMAC	Definitions	01/18/2018	Approval
20.11.39.8 NMAC	Variances	01/18/2018	Approval
20.11.39.9 NMAC	Savings Clause	01/18/2018	Approval
20.11.39.10 NMAC	Severability	01/18/2018	Approval
20.11.39.11 NMAC	Documents	01/18/2018	Approval
20.11.39.12 NMAC	Permit Waivers	01/18/2018	Approval
20.11.39.13 NMAC	Requirements for Source Categories to Which Part 39 Applies	01/18/2018	Approval
20.11.39.14 NMAC	Air Quality Notification Application	01/18/2018	Approval
20.11.39.15 NMAC	AQN Application Review	01/18/2018	Approval
20.11.39.16 NMAC	Transfer of Prior Authorizations to AQNs	01/18/2018	Approval
20.11.39.17 NMAC	Compliance and Enforcement	01/18/2018	Approval
20.11.39.18 NMAC	Amending and Air Quality Notification	01/18/2018	Approval
20.11.39.19 NMAC	Fees	01/18/2018	Approval
20.11.39.20 NMAC	AQN Cancellation	01/18/2018	Approval
20.11.41 NMAC – CONSTRUCTION PERMITS			
20.11.41.2(E)(2) NMAC	Additional Permit Requirements	01/18/2018	Approval
20.11.41.2(G) NMAC	Permissive Waiver	01/18/2018	Approval

## V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Albuquerque/Bernalillo County, New Mexico regulations, as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6 office (please contact the person

identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 28, 2019.

**David Gray,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 2019-11662 Filed: 6/4/2019 8:45 am; Publication Date: 6/5/2019]